

Message Text

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ACTION EA-12

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FM AMEMBASSY CANBERRA

TO SECSTATE WASHDC IMMEDIATE 4061

LIMITED OFFICIAL USE CANBERRA 6508

E.O. 11652: N/A

TAGS: EMIN, EINV, AS

SUBJ: DILLINGHAM CLAIM

REF: A) CANBERRA 5954, B) STATE 172432

1) FIRST ASSISTANT SECRETARY JOHN WHITE, MINERALS DIVISION, DEPARTMENT OF TRADE AND RESOURCES HAND DELIVERED CONFIDENTIAL AIDE MEMORIE TO EMBASSY THIS AFTERNOON ON DILLINGHAM CLAIM IN RESPONSE TO EMBASSY'S AIDE MEMOIRE DELIVERED ON APRIL 21 IN RESPONSE TO STATE 097543.

2) GOA'S AIDE MEMOIRE READS AS FOLLOWS:

"QUOTE THE AUSTRALIAN GOVERNMENT UNDERSTANDS THE CONCERN WHICH THE GOVERNMENT OF THE UNITED STATES CONTINUES TO FEEL ABOUT THE OUTSTANDING DIFFERENCES EXISTING BETWEEN THE AUSTRALIAN GOVERNMENT AND THE DILLINGHAM CORPORATION OVER THE CLAIM FOR COMPENSATION BY D.M. MINERALS.

3) CONSONANT WITH THE GOOD RELATIONS EXISTING BETWEEN AUSTRALIA AND THE UNITED STATES THE AUSTRALIAN GOVERNMENT SHARES THE WISH OF THE UNITED STATES GOVERNMENT THAT THIS DISAGREEMENT SHOULD BE AMICABLY RESOLVED.

4) THE AUSTRALIAN GOVERNMENT IS AWARE OF THE UNITED STATES GOVERNMENT'S BELIEF THAT COMPENSATION IS DUE TO
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BILLINGHAM UNDER INTERNATIONAL LAW. EXTENSIVE CONSIDERATION HAS BEEN GIVEN TO THE POINTS RAISED BY DILLINGHAM IN SUPPORT OF D.M. MINERALS' CLAIM. MOREOVER, AS THE UNITED STATES GOVERNMENT WILL BE AWARE, REPRESENTATIVES OF THE DILLINGHAM CORPORATION HAVE BEEN GIVEN A NUMBER OF OPPORTUNITIES TO EXPLAIN THEIR POSITION. NOTABLY, LEGAL REPRESENTATIVES OF THE AUSTRALIAN GOVERNMENT MET WITH

DILLINGHAM'S LAWYERS ON 18 MAY 1978.

5) IT REMAINS THE VIEW OF THE AUSTRALIAN GOVERNMENT, HOWEVER, THAT NO COMPENSATION IS DUE TO DILLINGHAM CORPORATION EITHER UNDER AUSTRALIAN LAW OR UNDER INTERNATIONAL LAW. IN PARTICULAR, THIS GOVERNMENT DOES NOT ACCEPT THAT THE REFUSAL TO GRANT THE NECESSARY APPROVALS TO THE EXPORT BY D.M. MINERALS OF THE MINERALS IN QUESTION AMOUNTED TO AN EXPROPRIATION OF PROPERTY FOR WHICH COMPENSATION IS PAYABLE UNDER INTERNATIONAL LAW.

6) THE AUSTRALIAN GOVERNMENT, AS THE UNITED STATES GOVERNMENT IS AWARE, HAS OFFERED TO MAKE AN EX GRATIA PAYMENT OF \$4 MILLION TO D.M. MINERALS. THAT FIGURE WAS REACHED AFTER A FULL EXAMINATION OF D.M. MINERALS' CLAIM.

7) IN THE ABOVE CIRCUMSTANCES THE AUSTRALIAN GOVERNMENT DOES NOT FEEL THAT IT WOULD BE APPROPRIATE TO ADOPT ANY OF THE MEANS SUGGESTED BY THE UNITED STATES GOVERNMENT TO DEAL WITH D.M. MINERALS' CLAIM. THE AUSTRALIAN GOVERNMENT IS INFORMING D.M. MINERALS THAT IT IS NOT WILLING TO REVISE ITS OFFER OF COMPENSATION AND NOW SEEKS FROM D.M. MINERALS A FIRM RESPONSE TO THAT OFFER. UNQUOTE

COMMENT: 1. WHITE TOLD EMBOFF THAT THIS NOTE INDEED REPRESENTS THE POSITION OF THE GOA. IT HAS BEEN A VERY REAL STRUGGLE; LIMITED OFFICIAL USE

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HOWEVER, ACCORDING TO WHITE, TO GET IT THROUGH THE MANY DEPARTMENTS CONCERNED WITH THE MATTER. HE SAID THAT THE MATTER HAD GONE TO THE PRIME MINISTER IN CABINET FOLLOWING THE CALL ON THE GOA'S SOLICITOR GENERAL BY THE DILLINGHAM ATTORNEYS IN MAY (CANBERRA 3837) AND THAT THE MATTER WAS THEN REFERRED DOWNWARD FOR THE DRAFTING OF AN APPROPRIATE REPLY. WHITE SAID THAT DEPUTY PRIME MINISTER ANTHONY AND MINISTER FOR TRADE AND RESOURCES IS WRITING LETTERS TO DERRY HILL OF DILLINGHAM AND BILL MURPHY OF MURPHY ORES TODAY (WHICH THEY SHOULD RECEIVE TOMORROW) INFORMING THEM OF THE GOA'S DECISION AS OUTLINED IN ITS NOTE TO THE EMBASSY.

2. I HAVE WITH THE DCM, ECON COUNSELOR AND POL COUNSELOR REVIEWED THE ABOVE PORTION OF THIS MESSAGE. I AM NOW FULLY PERSUADED IN THE LIGHT OF OUR DISCUSSION AND THE PREVIOUS HISTORY OF THIS MATTER THAT THERE IS NOTHING I WILL BE ABLE TO ACCOMPLISH BY FURTHER INTERVENTION WITH THE AUSTRALIAN GOVT. IF DOS BELIEVES ANY GOOD PURPOSE WILL BE SERVED BY RAISING THIS MATTER AGAIN, THEN I SUGGEST USE OF THE GOOD OFFICE OF AMBASSADOR RENOUF WHOSE RETURN TO AUSTRALIA IS IMMINENT.

ALSTON

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